

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN EDWARD ROACH,
Petitioner,
v.
ELDON VAIL,
Responder

CASE NO. C09-5155 FDB

ORDER ADOPTING REPORT
AND RECOMMENDATION DENYING
MOTION TO DISMISS PETITION FOR
WRIT OF HABEAS CORPUS

The Magistrate Judge recommends that the Respondent's motion to dismiss Petitioner's request for habeas corpus relief be denied. Respondent has not filed an objection.

As detailed in the Report and Recommendation, the petition for habeas corpus relief relates back to the date in which Petitioner was in custody. Therefore, the motion to dismiss should be denied.

The Court, having reviewed the petition and amended petition, the motion to dismiss, the response, the report and recommendation of the Hon. J. Richard Creatura, United States Magistrate Judge, and the remaining record, does hereby find and Order:

- (1) The Court adopts the Report and Recommendation;
- (2) The Respondent's Motion to Dismiss is **DENIED**. An answer to the Petition should be filed as soon as practical, and no later than 45 days from the date this Order is entered.
- (3) This Petition is referred back to Judge Creatura for further proceedings.
- (4) The Clerk is directed to send copies of this Order to Petitioner and to counsel for Respondent and note the due date for the answer on Judge Creatura's calendar.

DATED this 13th day of January, 2010.


FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE